

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
March 12, 2015

Meeting called to order at 6:09 p.m.

Board Members Present: Karen Kalmar, Deborah Davis, David Lincoln, Ann Grinnell, Robert Harris, Mark Alesse

Members absent: None

Staff: Chris DiMatteo, Town Planner; Elena Piekut, Assistant Town Planner

Pledge of Allegiance

Minutes: February 26, 2015

Ms. Davis moved to approve the minutes of February 26, 2015 as amended

Ms. Kalmar seconded

Ms. Davis proposes another change

Ms. Grinnell moved to amend the motion

Ms. Davis seconded

Motions carry: 6-0-0

Public Comment:

Ken Markley: Kittery's code standards should be brought more in line with AASHTO (American Association of State Highway and Transportation Officials) standards in order to reduce over-building of roads, particularly in rural areas serving small developments. For example, required roads serving 7-20 homes in Kittery can actually serve almost 2,000 trip ends per day, which is more in line with 200 homes. Changes would help prevent over-disturbance of large areas, which in turn create an increase in storm water, which then increase the need for larger stormwater management structures, which then increase the impact on adjacent land areas that may be sensitive, and so forth.

Ms. Grinnell: This should to be included on our action list for further discussion.

There was no further public comment.

ITEM 1 – Pine Tree Plaza Site Plan – Modification to an Approved Plan.

Action: grant or deny final plan approval. Kenneth Lemont, owner/applicant (for Harrison E. Lemont Management Co., Inc.), requests approval to amend an approved Site Plan to replace an existing building and ell with a new 2,450 sf building, and increase the existing garage at 435 US Route 1 in the Mixed Use zone, Tax Map 50, Lot 8. Agent is Jeff Clifford, P.E. with Altus Engineering, Inc.

Ken Lemont: When last before the Board, I was told to provide a lighting and landscaping design for your consideration. A landscape design has been submitted and, in discussions with the Planner and Jeff Clifford, have come to an agreement regarding lighting.

Mr. DiMatteo: The code requires screening as addressed in items 1 and 2 of the review notes, though this parcel has only a narrow area to meet screening requirements. There remains issues to be addressed for landscaping, but if the Board is amenable, these could be addressed at the staff level following approval. The parking is designed for ease of maintenance, and an island as suggested could complicate this.

Mr. Lemont: I appreciate Chris' opinion, and he is correct that it does create a nightmare for snow plowing. We have the same thing in front of the Pine Tree Country Store and people drive over it. I would prefer to work with staff to address screening and landscaping closer to the road. I would prefer to place more trees next to the road than create a planting island.

Ms. Kalmar: If you plant appropriately along the Carvery from the north that might be sufficient without additional planting in the parking area, as the front of the parcel appears to provide screening.

Ms. Davis: The planting along the front is more crucial with the parking area more for aesthetics. I would be comfortable with beefing up the corner by the Carvery.

Mr. Lincoln: Presented some photos of the existing signage and the parcel. Screening from the street is vital.

Discussion followed regarding what is legally existing and previously approved, and what is proposed.

Mr. DiMatteo: Screening is a code requirement and the proposed landscaping is addressed in the plan notes.

Mr. Lincoln: Will the additional plantings at the entrance impede sight lines of cars heading south onto Route 1? With the new proposed businesses, will traffic increase?

Mr. DiMatteo: The plantings will be placed further enough onto the site that this should not be a problem.

Mr. Lemont: The engineers have addressed these traffic issues and addressed them in their traffic survey.

Earldean Wells: The Conservation Commission has concerns about the location of the snow storage at the front of the site which could reduce the effectiveness of the under drain soil filter. Ken [Lemont] said he'd be pushing the snow back. This is something that should be considered, because if you get sand into those filters they stop working, requiring maintenance. He would save a lot of money if he didn't locate the snow storage at that location. We are fine with the storage at the back of the lot.

Mr. Lemont: I can keep the snow storage to the back of the lot.

Ms. Grinnell: The snow storage location at the front will be removed from the plan.

Ms. Kalmar: Asked about the wheel stops near the rain garden.

Mr. Lemont: There will be a guardrail or rocks at that location, similar to the Community Center. The building was specifically designed to fit the charm and character of Kittery, made out of wood with a nice facade. I will return with pictures when it is completed.

Ms. Kalmar: The Board needs to move on the waiver request regarding review by York County Soil and Water Conservation District [YCSWCD].

Ms. Kalmar moved to waive drainage design review by the York County Soil and Water Conservation District (Title 16.10.5.2.C.6)

Ms. Davis seconded

Motion carried: 5-0-1 (Lincoln)

Ms. Kalmar moved to grant approval with conditions for the modification of an approved plan for Pine Tree Plaza, Site Plan Amendment No. 2, revised March 2, 2015, for Kenneth Lemont, owner/applicant (for Harrison E. Lemont Management Co., Inc.).

Mr. Alesse seconded

Mr. DiMatteo suggested a review of the conditions prior to final vote, including removal of snow storage at front of parcel; and remove condition 6.

Motion carried: 5-0-1 (Lincoln)

Findings of Fact:

Whereas Kenneth Lemont, owner and applicant (for Harrison E. Lemont Management Co., Inc.) requested approval to amend an approved Site Plan to replace an existing building and ell with a new 2,450 sf building, and increase the existing garage and associated parking, lighting, landscape and drainage improvements at 435 US Route 1 in the Mixed Use zone, Tax Map 50, Lot 8. Hereinafter the "Development". Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan").

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

The proposed Development appears to conform to Title 16. The Board finds this standard has been met.

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

B. Freshwater Wetlands Identified.

None have been identified. The Board finds this standard is not applicable.

Vote of 4 in favor 0 against 2 abstaining (Lincoln/Harris)

C. River, Stream or Brook Identified.

None have been identified. The Board finds this standard is not applicable.

Vote of 4 in favor 0 against 2 abstaining (Lincoln/Harris)

D. Water Supply Sufficient.

The property is currently connected to municipal water. The Board finds this standard is not applicable.

Vote of 5 in favor 0 against 1 abstaining (Harris)

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on the municipal water supply currently servicing the property. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

F. Sewage Disposal Adequate.

The property is currently connected to municipal sewer and the Kittery Sewer Department Superintendent has stated the plan is acceptable. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available.

The property is currently managed for solid waste disposal and the proposed development accommodates an additional dumpster. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

H. Water Body Quality and Shoreline Protected.

It does not appear that the proposed development will have an adverse effect on the nearby wetland. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

I. Groundwater Protected.

The site is serviced by public sewer. The Board finds this standard is not applicable.

Vote of 5 in favor 0 against 1 abstaining (Harris)

J. Flood Areas Identified and Development Conditioned.

The property is not located within a flood prone area. The Board finds this standard is not applicable.

Vote of 6 in favor 0 against 0 abstaining

K. Stormwater Managed.

The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

L. Erosion Controlled.

The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. The Board finds this standard has been met.

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

N. Water and Air Pollution Minimized.

It does not appear the proposed development will result in undue water or air pollution
The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The property does not include any significant aesthetic, cultural or natural values that require protection.
The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

Now therefore, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: Title 16.10.5.2.C.6 Review by the York County Soil and Water Conservation District
Granted: March 12, 2015

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained in the Findings of Fact (dated: March 12, 2015).

Conditions of Approval (Not to be included on the final plan):

5. Revise the site plan (C-2) to reflect the minor plan changes staff recommended in the 3-12-15 Plan Review Notes, including removal of plan reference to snow storage at the front of the property.
6. Revise the site plan (C-2) to include additional tall shrubs and small trees in the area adjacent to the property to the east (M60-L22, Henry VIII Carvery), approximately 50 feet in from Route One, to aid in screening the proposed parking from view.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 2 – Beatrice Way –Major Subdivision Plan - Preliminary Plan Review.

Action: grant or deny preliminary plan approval. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Map 61 Lot 08, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Ken Markley: Addressed the CMA Review, noting many of the issues have been addressed. Suggested holding off on the wetland crossing issue at this time.

Mrs. Sparkowich: [Attached]

Mr. Markley: Suggests a road association rather than a homeowner's association; a condition of approval could be included that no further land division would be allowed without Board approval; addressed Preliminary Plan approval requirements including addressing Highpoint Circle and Kittree Lane; recertification of wetlands, as soils has already been done; finalization of boundary survey; required open space is as proposed.

Break

Ms. Kalmar suggested the Board proceed with voting on the special exception request that a conventional subdivision was appropriate for this development versus a cluster subdivision to avoid pushing the development to the rear of the property where the valuable habitat is located. A conventional subdivision requires a special exception.

Ms. Kalmar moved to grant a special exception for a conventional subdivision for the Beatrice Way subdivision.

Seconded by Mr. Harris

Mr. Lincoln: Where will this special exception be shown?

Mr. DiMatteo: In the final Findings of Fact.

Motion carried: 6-0-0

Ms. Kalmar moved to grant the request for a waiver from a cul-de-sac to a hammerhead.

Mr. Lincoln seconded

Ms. Davis: We seem to have issues regarding hammerheads vs. paper cul-de-sacs, which leads to more development.

Mr. DiMatteo: This is a reasonable request, as a standard cul-de-sac takes up more space and a hammerhead has less impact. The paper cul-de-sac allows for a more reasonable layout of lots.

Ms. Kalmar: I see the logic of less impervious surface, but the frontage is still there, it just isn't paved. We're benefitting the natural resources.

Discussion followed regarding driveways onto the hammerhead, parking in the hammerhead area that could impede emergency vehicles.

Motion carried: 6-0-0

Ms. Kalmar moved to waive review by the York County Soil and Water Conservation District (16.9.1.3.C).

Ms. Davis seconded

Motion carried: 6-0-0

Ms. Kalmar moved to waive the requirements for sidewalks on Beatrice Lane.

Mr. Harris seconded

Ms. Davis: Requests that further development of the rear acreage would require sidewalks.

Ms. Kalmar: When waiving a required improvement, the objective must be met. Given the size of the proposed project, the roadway and shoulder would provide a safe place to walk. Less pavement the better.

Ms. Davis: Concerned about future 'woodlot management' and trucks on the road.

Ms. Kalmar: Timber harvesting is not a permitted use in the Rural zone.

Mr. Markley: There has been no timber harvesting since 2010. Woodlot management would be to remove damaged and diseased trees and for personal firewood use.

Motion carried: 6-0-0

Board discussion of Plan Review Notes:

1. Vernal Pools/Wetlands: Protection of the vernal pool areas with other wetland, forested wetland and open space areas, avoiding fragmentation. Mr. Markley: The proposed open space area meets the concerns of the Conservation Commission and ACOE. Brett Taylor, Potential Buyer: Would like to retain property value and conserve the land, and this proposal meets those objectives. It is not my intention to develop beyond my single family home, but doesn't want to diminish his future property value, perhaps for his children. Discussion followed regarding locations of protected open space areas.
2. 'woods road': Road will become part of proposed parcel H and blocked at both ends following recording at YCRD. Plan will illustrate blocked areas. Buffer of trees need not be included.
3. Highpoint Circle extension acceptance: Discussion followed regarding the history of this road area, whether the town would accept the extension to the hammerhead at Kittree Lane. Mr. Sparkowich agrees the town should take it over. The Board requested the applicant to submit the necessary applications for street acceptance and naming to the town.

4. Boundary Plan: Agent will submit a boundary plan.
5. Density calculations: Will be addressed.
6. Wetland delineation: A re-certified delineation will be prepared for the area to the south and west of proposed parcel I.
7. ROW/Easement for parcel A and I: Reference will be made as an 'easement'. Include plan note to state 'driveway no longer than 500 feet serving two dwellings are permitted'. Submittal of a wetland alteration application is needed.
8. Sidewalk: Previously addressed.
9. Homeowner's association: In lieu of a homeowner's association, establish a road association and a deed covenant for the parcel where the open space area is located.
10. Condition of final approval restricting further division of land without receiving Board approval.

Mr. Markley: Owner would like a waiver to place a driveway longer than 500 feet.
Discussion followed regarding the authority to grant such a waiver. No decision was made.

Discussion returned to the open space location.

Break

Brett Taylor: I am spending a lot of money for this property and don't want to give up my rights as my heirs may want, in 50 years, to be able to access the rear of the property.

Discussion followed regarding code requirements to establish contiguous open space as well as a reduction in required open space for conventional subdivisions; review process of various development scenarios.

Ms. Grinnell: Asked for a Board consensus regarding the applicant's open space design. The Board did not reach a consensus (2 consenting; 4 not consenting).

Ms. Kalmar moved to grant preliminary subdivision approval to the Beatrice Lane subdivision plan as revised February 19, 2015 with conditions: resolution of open space issue; include stone wall closure of 'woods road' on the plan; receipt of boundary plan; road acceptance petition application; include net residential acreage and density calculations on plan; re-delineation of wetland area; include plan note to state 'driveways no longer than 500 feet serving a maximum of two dwellings are permitted'; road association and back parcel covenant for open space maintenance; wetland alteration application.

Ms. Davis seconded

Motion carried: 6-0-0

Members agreed to review Item 5A out of agenda order.

Ms. Kalmar moved to extend the meeting 15 minutes

Ms. Grinnell seconded

Motion carried: 6-0-0

ITEM 3 – Town Code Amendment - Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding; 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required.

Action: review amendment and schedule a public hearing. Proposed amendment: codifies the need to hold a pre-construction meeting; updates provisions associated with inspections; and provides clarity through minor changes where needed.

Mr. Harris: Read from a prepared statement regarding the proposed amendment language.

Discussion followed regarding rewording of the proposal.

Ms. Grinnell: Comments should be shared with the Board during a meeting and not sent independently to the Town Planner. It is the Board's responsibility to review code amendments as a Board.

Ms. Davis moved to extend the meeting an additional 15 minutes

Mr. Alesse seconded

Motion carried unanimously

Mr. DiMatteo: Willing to meet with Mr. Harris to review his concerns and add to the March 26 meeting as a public hearing.

Ms. Kalmar moved to hold a public hearing on March 26, 2015 to discuss proposed code amendments to Title 16.4.4.1, 16.10.3.7, 16.10.3.8, 16.10.8.2.2 and 16.10.9.1.

Mr. Alesse seconded

Motion carried: 6-0-0

ITEM 4 – Board Member Items / Discussion

A. Retreat date and agenda: Wednesday, April 8, 9-11 a.m., Kittery Community Center

B. Other - Board Sensitivity Training, Thursday, March 19 at 6:30 p.m.

ITEM 5 – Town Planner Items:

A. Landgarten, minor modification to an approved plan for 7-17 Wallingford Square.

Originally approved in 2013. Proposed minor modification conforms with the ordinance. Both the CEO and Planner are comfortable with the proposed change of use and parking requirements have been met. Request the Board allow staff to approve the minor modification. Following discussion Board members concurred this request may be reviewed at staff level.

B. Recently ordained amendments.

C. Other: Shoreland development project not within the 100-foot setback; does the Board need to review?

Ms. Davis: If the code requires all shoreland development requires Board approval, that is what is needed.

Ms. Kalmar: A summary of the protocol you are suggesting will help us better address your request.

D. Cluster workshop: May 28, 2015

ITEM 6 – Board Member Items / Discussion

Ms. Grinnell: Reminded members to review letter from Vern Gardner.

Ms. Driscoll: Asked for update on sewer project;

There is a need for a manager to continue the Kittery Community Market.

Mr. Alesse moved to adjourn

Ms. Kalmar seconded

Motion carried 6-0-0

The Kittery Planning Board meeting of March 12, 2015 adjourned at 10:33 p.m.

Submitted by Jan Fisk, Recorder, March 18, 2015

ATTACHMENT

Kittery Planning Board
3/12/15
Item 2 O.B.L.P. 5 Lot Subdivision

RECEIVED
MAR 13 2015

BY: C. DiMatteo

read by Ms. Sparkovich
at meeting

My husband Rick and I were very saddened once again to hear that it has been recommended to have sidewalks on Beatrice Lane. There is going to be so few people walking in that area. This isn't necessary at all. This is really a horse trail. Plus there's no money for sidewalks. We've already spent forty-five thousand dollars (\$45,000) on this project, not including the cost of the road plus everything else that is required.

The prospective buyer, who is here tonight, originally came to us seeking to buy a large parcel of land, that wouldn't be developed. His desire was and still is to see the land remain the way it is so he and his family can enjoy the peace and beauty all around them. I know that the Town Planner doesn't seem to believe that Rick, I and the buyer are all in agreement to see the land remain the way it stands today. ***We desire to see a country setting.***

All along, we have been treated as if this forty-three acres will be fully developed. This seems so *unfair* to assume that this is the case, causing us to incur extra added expenses. Our intentions are just the opposite, to see the forty-three acres of land not^{be} developed into a housing project. To lay out finances that we don't have, for sidewalks that aren't really needed, just for a few homes is ridiculous.

It seems to us, that we are on a path for failure, instead of getting help as a taxpayer.

The way we see it, this is going way beyond the point of common sense. We are constantly being challenged on just about everything. That means, that we are continually incurring added expenses that aren't necessary and it never seems to end.

When we think we are just about at the finish line, we are thrown another curve ball such as the sidewalks.

Rick and I would ask you, the planning board, to seriously consider everything we have gone through the last eleven years. We have faith that the planning board is here to help us get through this process, and that you don't want to see us fail.

We appreciate so much all the time, work and effort you so freely give each week to help us and others that live in this town. Tonight, my husband and I are asking the planning board to not support the town planner's recommendation for sidewalks on this project.

Thank you,

Rachel Sparkowich